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OFFICE OF PETITIONS

In re Application of	:
Watson et al.	:
Application No. 10/711,631	: DECISION REFUSING STATUS
Filed: September 29, 2004	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 68.0417	:

This is in response to the petition under 37 CFR 1.47(a), filed January 21, 2005.

The petition is **dismissed**.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

On September 29, 2004, applicants filed the above-identified application without an executed oath or declaration. On November 23, 2004, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Application," requiring an executed oath or declaration and a \$130.00 surcharge for its late filing. Additionally, the Notice required applicants to submit replacement drawings in compliance with 37 CFR 1.84 and 1.121.

On January 21, 2005, applicants filed, inter alia, the present petition, a \$130.00 surcharge, a declaration missing the signature of joint inventor Parveen Sayela, and an authorization to charge their deposit account for any necessary fees.

In the present petition, applicants state that after diligent effort, applicants have been unable to reach Ms. Sayela. Specifically, Joanne Hyland, a patent administrator, stated that she emailed the declaration and assignment to Ms. Sayela on October 27, 2004; however, she received no response. On November 3, 2004, Ms. Hyland again emailed Ms. Sayela and requested a response to the first email and Ms. Sayela's current contact information. On December 17, 2004, Ms. Hyland sent Ms. Sayela a certified letter to her last known address. The letter was returned to Ms. Hyland on January 14, 2005.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lacks item (1) as set forth above:

As to item (1), it is unclear whether applicants are arguing that they are unable to locate the non-signing inventor or that the inventor has refused to sign the declaration.

Initially, the Office notes that applicants have failed to submit sufficient evidence to prove that diligent efforts have been made to locate the non-signing inventor. See MPEP 403.03(d). If attempts to obtain a forwarding address and to locate the nonsigning inventor by other means such as through telephone or the Internet fail, then applicants will have provided the necessary proof required under 37 CFR 1.47 that the inventor cannot be reached. Details of the efforts to locate the nonsigning inventor should be set forth in an affidavit or declaration of facts by a person with firsthand knowledge of the details. Applicants should submit documentary evidence such the results of an Internet search.

However, if applicants are asserting that the inventor refuses to sign the declaration, applicants have failed to support this assertion. It appears that Ms. Hyland emailed only the declaration and assignment to Ms. Sayela. Unless inventor Sayela was presented with a complete copy of the application papers, including the specification, claims and drawings, she could not attest that she has "reviewed and understands the application papers." Accordingly, applicants failed to show or provide proof that the nonsigning inventor has refused to sign the declaration. See MPEP 409.03(d). To show that the inventor has refused to join in the application, applicants must show that a complete copy of the application papers, including the specification, claims and drawings, was presented to

inventor Sayela and that she did not respond to the request that she sign the declaration.

On December 8, 2004, the fee for a petition under 37 CFR 1.47(a) increased to \$200.00. Applicants' Deposit Account will be charged accordingly.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Senior Petitions Attorney:**

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
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By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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